

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

Brian L. Miles	:	
Plaintiff,	:	Case No.:
vs.	:	Complaint With
		<u>Jury Trial Demand</u>
Zwicker and Associates, P.C., a	:	
professional corporation organized	:	
under the State of Georgia	:	
Defendant		

**Complaint Seeking Damages For Violations
Of The Fair Debt Collection Practices Act**

Preliminary Statement

This action seeks redress for the unlawful and deceptive practices committed by the Defendant in connection with its efforts to collect a debt. Defendant's conduct involves the making of false and misleading statements to the Plaintiff or others, mischaracterizing a debt, and taking action that cannot be legally taken. Plaintiff seeks monetary relief based on Defendants' violations of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq*

Parties

1. Plaintiff, Brian L. Miles, is natural person who resides in Newton County,

Georgia.

2. Plaintiff is allegedly obligated to pay a debt and is therefore a “consumer” as that term is defined by 15 U.S.C. § 1692a(3).
3. Defendant, Zwicker and Associates, P.C. (hereinafter “Zwicker”) does business in Georgia.
4. Defendant uses interstate commerce or mail in business the principal purpose of which is the collection of any debts and/or regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another and is therefore a “debt collector” as that term is defined by 15 U.S.C. § 1692a(6).

Jurisdiction and Venue

5. Because this case arises under the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 et seq., jurisdiction of this Court arises under 28 U.S.C. § 1331, and supplemental jurisdiction for state law claims arises under 28 U.S.C. § 1337.
6. Venue is proper in this Court because a substantial part of the claim arose in Georgia, and all Defendants “reside” in Georgia, as that term is used in 28 U.S.C. § 1339.

Factual Allegations

7. On or about November 12, 2015, Defendant, through its agent and

employee, Floyd Dickens III, Esq., filed a civil action in the Superior Court of Newton County, State of Georgia, on behalf of American Express Bank, FSB, seeking collection of a debt allegedly owed by the Plaintiff.

8. The alleged debt which is the subject matter of Defendant's complaint was, at the time of filing, barred by the applicable statute of limitations.
9. Upon information and belief, Defendant through its agents and employees took other collection action against the Plaintiff, including telephone calls and other written communications.

Trial By Jury

Plaintiff is entitled to and hereby requests a trial by jury.

Causes Of Action

Count One

VIOLATION OF THE FAIR DEBT COLLECTION PRACTICES ACT

10. The allegations of paragraphs 1-9 above are realleged and incorporated herein by reference.
11. Defendant's actions in connection with its attempts to collect the alleged debt violated the FDCPA, including without limitation 15 U.S.C. §§ 1692e(2), 1692e(5), and 1692f.
12. As a result of Defendant's violations of the FDCPA, Plaintiff has suffered actual damages not limited to out-of-pocket expenses and emotional

distress. Plaintiff is therefore entitled to recover actual damages under 15 U.S.C. § 1692k.

13. Under 15 U.S.C. § 1692k, Plaintiff is also entitled to recover from Defendant \$1,000 in statutory damages and reasonable attorney's fees and costs.

WHEREFORE, Plaintiff prays that judgment be entered against these Defendants for:

- a.) Plaintiff's actual damages;
- b.) Statutory damages against pursuant to 15 U.S.C. § 1692k;
- c.) Reasonable attorney's fees and costs pursuant to 15 U.S.C. § 1692k; and
- d.) Such other and further relief as may be just and proper.

Respectfully submitted this 8th day of December, 2015.

/s/ Matthew T. Berry
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